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OF

HON. J. S. GREEN, OF MISSOURI,

IN FAVOR OF THE

ADMISSION OF KANSAS

UNDER

THE LECOMPTON CONSTITUTION.

DELIVERED

IN THE SENATE OF THE UNITED STATES,

MARCH 23, 1858.

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Mr. PRESIDENT: The Committee on Territories examined the subject that was submitted to them, having before them the constitution of the State of Kansas and all the facts connected with its formation. The result of that examination has been reported to the Senate and the country. The majority of the committee deemed it proper to select me to make that presentation to the Senate. In consequence of that fact, it now devolves upon me to review the arguments that have been presented against that report, and against the positions of the friends of this measure, and to reply to them as briefly as I well can. I need not undertake to magnify the importance of this subject. I could not do so. It extends in its effects and consequences to the vital interests of the Republic. Nothing could strike a more fatal blow at what ought to be the permanent interests of all sections of the Union, than the improper decision of the subject now under consideration.

The Senator from Michigan, (Mr. STUART,) with a flourish of trumpets unusual with him, said that the friends of the Kansas measure had been driven from all their positions. With due deference to him, I must be permitted to remark that I am not conscious of any friend of this bill being driven from its support; or of any position taken in the report of the committee being surrendered or abandoned; nor am I conscious of any successful answer to any single position taken in that report. If we have been driven from any one, I would like to have that one pointed out. General charges, general assertions, and general allegations will not do for the Senate of the United States. They will not do for a court of justice of the lowest grade. They will not even do upon the stump, or at the hustings. We must come to specific facts—to the true questions that have to be decided; and not undertake to prejudice the one side or the other by making broad, general, unsupported assertions.

So it is with the Senator from Illinois, (Mr. DOUGLAS.) He says that the principle of the Kansas bill was, that the people should be left perfectly free to decide all domestic questions for themselves in their own way; and then *assumes* that such freedom of action has not been accorded to them. As I have previously remarked, before we can arrive at a safe and just con-

clusion we must take all material facts and trace them up in their proper connection; and if, in such connection, we cannot agree in the deductions or in the conclusions, that variance in opinion will be an honorable difference between honorable Senators. For my part, I see no cause and have heard no reason to justify a sound logician in changing one single position. The principles upon which the report is based remain unshaken. But one single point of the report was called in question by the Senator from Illinois. What point in it was even controverted by the Senator from Michigan? What principle enunciated in it has been called in question by any Senator on the opposite side?

It is true, exception was taken by the honorable Senator from Vermont (Mr. COLLAMER) to the language. He said there were harsh expressions in it; that the Opposition party in Kansas were characterized as "rebels," as "contumacious;" as standing in a position of hostility to the Government. It does not so characterize them; and, if the facts presented in that report will not justify the accusations, it is a duty to take them back. Each single charge, with regard to the character of the Opposition in Kansas, is sustained by official evidence presented in the report, from which there is, and can be, no escape. If the honorable Senator supposes it unparliamentary or indecorous to make specific charges, upon evidence presented, in a State paper, to remain parliamentary upon the records of the country, I remark that the speech of his colleague from the same State of Vermont, (Mr. FOOT,) which also becomes a part of the parliamentary history of this country, has more of abuse, more of denunciation, more of harsh epithet, than can be found in any speech, or in any paper, presented on the subject from this side of the Chamber. With what propriety, therefore, shall one representative of a State complain of the expressions of opponents, whilst tolerating, in his colleague, the use of language so extraordinary harsh as to have taken the whole Senate by surprise?

I say, further, that that was the only exception taken by the honorable Senator to the report. The Senator from New Hampshire (Mr. CLARK) desired an explanation in regard to one expression in it; which explanation was at once given, and is borne out by the context in the report, and leaves no possible chance for misconstruction. With what justice, therefore, shall we be taunted with having been driven to the wall; with having been driven from our position; with having been vanquished in all the debate and in all the investigation had before the Senate and the country? Such is not the case, as I understand it.

But the Senator from Michigan says, that although it is true that the convention adopted this constitution, yet that adoption is not evidence that it embodies the will of the people of Kansas. There seems to be a sort of oneness in the moulding of expressions by the Opposition—"embodying the will of the people!"—as if mutually adopted by agreement among the Opposition. I will make no issue upon that point. There is not a Senator, nor a member of the House, nor a citizen of the Union, but what says that all constitutions *ought* to embody the will of the majority. How that fact is to be ascertained—what legal steps can be pursued for its ascertainment, consistent with order, peace, and constitutional government—is another question; but that we ought to take the proper steps, *the legal steps*, to ascertain the will of the people, is a conceded fact. It is imagined by some, and I believe by the Senator from Michigan, that the best mode of ascertaining the will of the people is by a submission to a vote of the

people; and he referred to the vote on the 4th of January as affording the clearest and most conclusive evidence that the people of that Territory disapproved the constitution. He also brought, as evidence of that assertion, what he says is a direct vote of the people; and he also referred to a mass meeting, held at Leavenworth, consisting of delegates claiming to represent, by voluntary action, a vast majority (as he says) of the people of the Territory. How, I ask, can he undertake to give the sense of the people from the mere action of a meeting at Leavenworth? Why rely on a single meeting to ascertain public opinion, if we are to reject as unreliable the opinion of a legal convention, legally elected at a public election, and thus representing the opinions of the people in a legal sense? Those who could get up a meeting, without law, without system, without order, through their delegates to a self-constituted assembly at Leavenworth, can be relied upon to represent the people and speak their will, according to his argument; but when the legally chosen, the legally appointed delegates, elected by the people at the ballot-box, speak, it is not to be received as evidence of the will of the people! The irregular and the irresponsible, this body is told, can be relied upon; the regular, legal, and the responsible, should be rejected as unreliable! Are the friends of the constitution to be vanquished by reasoning and by facts like these?

Mr. President, as I propose to notice the several objections urged by the Senator from Illinois, and others, my train of remark will be rather desultory. The Senator from Illinois takes the position, that, although there was a submission of the slave article of the constitution on the 21st of December, yet it was an unfair submission. I have, on several occasions, corrected Senators in their quotation of the constitution on this subject. This is the last time that I shall ever correct them upon it. They all have, including the Senator from Illinois, uniformly represented this to have been the mode of voting; that no man could vote *for* or *against* slavery on the 21st of December until he first voted *for* the constitution. Such is not the fact. There is no such provision in the schedule—none in the constitution. There was but one single question submitted. The complaint has been often made, by these same Senators, that there was no submission of the whole constitution; yet they now say that it *was* submitted, and unfairly submitted, because each man was compelled to vote for the constitution before he could vote upon the other subject. I answered that objection in the first remarks I ever submitted to the Senate on this subject. I took the ground, and it has never yet been successfully answered, that there was but *one* question submitted by the convention—not *for the* constitution as one question, and slavery or no slavery another question; but the *one* single question of "slavery or no slavery." It will be observed that the form of the ballot which each voter had to make use of was not for the constitution and slavery, or *for* the constitution and no slavery. No such ballot as that was proposed—none whatever. What then? Why, the question of slavery was submitted. How was slavery to be protected? How was it to be guarantied in the constitution. It was already inserted in the constitution. The question submitted, then, was, *shall it remain there*, or not? That was the vital question which was submitted to the people to decide. The voter was not called on to vote *for* the constitution with slavery, or *for* the constitution with no slavery; but, shall the protection of slavery be, or shall it not be, in the constitution?

Thus, as I heretofore exemplified, when the constitution of the State of

Louisiana was adopted, each voter voting was required to make use of a ballot, thus: "Constitution accepted," or "Constitution rejected." There would have been just as much plausibility for the Senator from Illinois to complain of the action of the convention of the State of Louisiana, alleging that each voter should be compelled to vote first for the constitution and then its acceptance, or for the constitution and its rejection, as to undertake to build up an argument that under this schedule the voter is compelled to vote for the constitution and then slavery, or for the constitution and then against slavery. They are presented in identically the same manner. The whole scope of this section of the schedule shows that but one single question was submitted for decision. All other questions were settled by the convention. It is said the people of Kansas complained that no other question was submitted. It is said that the people of the country complain because no other question was submitted. I understood the Senator from Illinois, in the speech he made here in the Senate before the arrival of the constitution from Kansas, to predicate his objections upon the non-submission of the constitution.

Mr. DOOLITTLE. Will the Senator allow me to ask him a question?

Mr. GREEN. Certainly.

Mr. DOOLITTLE. I would inquire of the honorable Senator whether the schedule does not require of the man offering to vote, not only to vote for the constitution——

Mr. GREEN. It requires no such thing.

Mr. DOOLITTLE. Does it not go beyond that, and require him to take an oath to support it?

Mr. GREEN. Of course, if adopted.

Mr. DOOLITTLE. Does it not only require him to vote for the constitution with slavery, or the constitution with no slavery, but to take an oath to support it before he can vote at all?

Mr. GREEN. I will answer the Senator. First, I see the remains of that old error still clinging to the mind of the Senator. He asks me the question, with the schedule before him, whether it did not require a voter to vote for the constitution with or without slavery? There is no such word in it. Let the Senator look at it. It is now in his hand. Second, with regard to the oath to be taken: if challenged, the voter was required to take an oath to support the constitution if it become the supreme law of the land, as all good citizens are. There would have been a peculiar propriety of the people of Kansas making such a requisition, as there had been a proclamation by the Opposition that they would never submit to law and order. Those who stand in open rebellion to the government, ought to be subject to some honorable and fair test before they are permitted to participate in shaping the fundamental law.

As I do not wish to be drawn off from the train of remarks I contemplate making, I will return to the point at which I was interrupted. The Senator from Illinois made the remark, in his first speech on this subject, that the President of the United States did not understand the Kansas-Nebraska bill, he being at that time our distinguished representative at London; and he excused the ignorance of the President on the ground of his absence from the United States. The President's fundamental error, to which he then called attention, consisted alone in this: the President said that the Kansas-

Nebraska act did not require the constitution, when formed, to be submitted to the vote of the whole people. This was regarded by the Senator as the fundamental error. He, the author of the bill—he, the advocate of the bill—he, the defender of the bill before the country, ought to know more about it than the President, who was then absent from the country, and who, perhaps, had not read all that had taken place on the subject. Sir, I have a right to believe that the President of the United States has, at least, read the report of the honorable Senator, made at the time he introduced the Kansas-Nebraska bill; and if he took his impressions from that report, if they are false impressions, the responsibility falls upon the report, and not upon the President. To show what justification he had in his belief upon the subject, I will read a few words.

Here is the report by Mr. DOUGLAS to accompany the bill (S. No. 22) made January 5, 1854. He goes on and gives a history of the compromise measures of 1850—a very clear, forcible illustration of the principles intended to be thereby established, in the same strain that he did last night with so much ability, and which gratified me so much to hear. The object then was to organize the Territories of Kansas and Nebraska. The object of the bill was to apply the same principles settled in the compromise measures of 1850 to the Kansas-Nebraska bill organizing these Territories in 1854. He reasons out the subject with great force and with great beauty, and arrives at the following conclusions:

"From these provisions it is apparent that the compromise measures of 1850 affirm and rest upon the following propositions: 'The substitute for the bill which your committee have prepared, and which is commended to the favorable action of the Senate, proposes to carry these propositions and principles into practical operation in the precise language of the compromise measures of 1850.'"

What are those principles?

"First. That all questions pertaining to slavery in the Territories, and the new States to be formed therefrom, are to be left to the decision of the people residing therein."

That would seem to sustain the view which the Senator from Illinois pressed, when he said that the President was out of the United States, and he therefore excused him for not understanding what the principles of that bill were. But, sir, I have not read all of that first principle. It says what I have read, and then goes on to say:

"Are to be left to the decision of the people residing therein, by their appropriate representatives, to be chosen by them for that purpose."

This is the report of the Senator from Illinois, made when the Kansas bill was presented. At that time he said the decision of the slavery question was to be left to the people, to be exercised—how? By their appropriate representatives in convention assembled. Because the President did not complain of the action of the people of Kansas in not submitting the constitution to a vote of the people, but followed out the principle which the Senator had presented as the leading idea in the Kansas-Nebraska act, that it was to be decided by their representatives, he complains of the President, and of the action of the people of Kansas. I have ever held, and yet hold, that it was for the people, acting through their convention, either to submit or not to submit the constitution; that the Congress of the United States has no constitutional right to stop and demand of them to submit it; that, if such demand should be made, it would be a violation of duty, a violation of constitutional right, and that we who did it would

be setting an example never set by our predecessors in office, and, I trust, never will be set by those who are to come after us.

It is said, however, with a great deal of ingenuity, by the Senator from Vermont, that it is true the people, by convention, can act; but, in order to make it binding and conclusive action, they must have legal authority to act; that the action of the people of Kansas, not being predicated upon an enabling act, is mere voluntary action, and not, therefore, legal action—not binding upon those who do not choose to act. The Senator from Illinois shadows forth about the same idea in his first speech. It is this:

"So far as the act of the Territorial Legislature of Kansas calling this convention was concerned, I have always been under the impression that it was fair and just in its provisions. I have always thought the people should have gone together *en massè* and voted for delegates, so that the voice expressed by the convention would have been the unquestioned voice of the people of Kansas. I have always thought that those who staid away from that election stood in their own wrong, and should have gone and voted, and should have furnished their names to be put on the registered list, so as to be voters. I have always held that it was their own fault that they did not thus go and vote; but yet, if they chose, they had a right to stay away."

There seems to be in this a little contradiction. If they did wrong when they staid away, then it was their duty to have voted; and hence those who did vote did right. He further says:

"They had a right to say that that convention, although not an unlawful assemblage, is not a legal convention to make a government; and hence we are under no obligation to go and express our opinion about it. They had a right to say, if they chose, 'we will stay away until we see the constitution they shall frame, the petition they shall send to Congress; and, when they submit it to us for ratification, we will vote for it if we like it, or vote it down if we do not like it.' I say they had a right to do either, though I thought, and think yet, as good citizens, they ought to have gone and voted; but that was their business, and not mine."

The Senator from Vermont proclaims the same idea that there was no legality attached to it; and drew a distinction, which I think my honorable colleague completely answered—that there was a difference between a legal proceeding and a proceeding by authority. What he meant by legal was, that it was not prohibited by law, and therefore not unlawful. I think I can adduce a little authority to show that this was a legal proceeding. The authority that I propose to present consists, first, in the report represented by the Senator from Illinois in 1856, in which he makes his celebrated argument upon the power of Congress over the Territories. He deduces the power that Congress has under the Constitution to legislate for the Territory, or over the Territory, from that clause which says:

"New States may be admitted by the Congress into this Union."

Without conceding the correctness of his source of power, I will proceed to show what he thought had been accomplished by the establishment of a territorial government. He uses this language on page 4:

"Hence, before the power can be safely exercised, the right of Congress to organize Territories, by instituting temporary governments, must be traced directly to some provision of the Constitution conferring the authority in express terms, or as a means necessary and proper to carry into effect some one or more of the powers which are specifically delegated. Is not the organization of a Territory eminently necessary and proper as a means of enabling the people thereof to form and mould their local and domestic institutions, and establish a State government under the authority of the Constitution, preparatory to its admission into the Union."

His idea, as shadowed forth in this report, and not only shadowed forth, but expressed in very explicit language, is, that the exercise of the power to establish a temporary government for a Territory was a means to execute another constitutional power; that that other constitutional power was to admit a State; and that the establishment of a territorial government was to *enable* them to prepare for that admission. Thus, according to his idea at that time, it, in the language of Governor Walker, is an enabling act; but I care nothing about that. It was a legal proceeding, when they proceeded to form a State government, whether this is an enabling act or not. It is well known that a prior consent of Congress has not been the established practice of the Government. It is equally well known that all these territorial governments are in the law expressly stated to be for the purpose of preparing them for admission into the Union. They are all said to be *temporary*. The express word is employed even in the Kansas act—a *temporary* government for Kansas in the territorial form. So of Nebraska—a temporary government in the territorial form.

Now, if it be a "temporary" government, if it be to enable them to prepare for admission into the Union, if it be as a means to enable Congress to execute the power to admit a State, as he argues in his report, *then it is all that an enabling act could possibly be.* But whether that be so or not, I proceed upon a broad principle of equity, which is this: the uniform practice of the Government has been to admit Territories as States; and citizens of any of the old States, North, East, South, or elsewhere, going and settling in a new Territory established during the past practice of the Government, looking at the past action of Congress, have a right, growing out of the common practice, to expect the organization of a State government, when they obtain the requisite strength. The common practice to so admit them is an inducement to them to settle there; and not to concede to them what has been uniformly conceded to all others, without exception, would be a fraud upon the people who settle in the Territory. It would be a breach of the common law which has grown up. Now, as Congress has been uniform in granting enabling acts, as Congress has heretofore said an enabling act is not a necessary prerequisite, as the practice of the Government has been uniformly to admit them as States at the proper time, he who settles there has *a right*, under that practice, to expect that that common-law practice shall be adhered to and carried out in good faith—more especially when settling in the Territory acquired from France by the Louisiana treaty, which specially stipulated that it should be done.

But, independent of all that, there was a government in Kansas, clothed with governmental power, subject only to the Constitution of the United States, which contemplated their admission into the bosom of the old family. That government was a territorial government. It has been said that it was a usurped government; that it was established by fraud and violence; that external power from the State of Missouri went over there and forced it upon them, all of which I pass by as unworthy of notice. Whether true or untrue, it was a government *de facto*. It was a government wielding the power of the territorial authority. It was a government authorized, under the organic act, to do all that any other government, under that act, could have done. California was under a kind of military government, established under General Riley, and the Senator from Illinois, with great ingenuity, and great plausibility, (and I am willing to adopt it for the purposes of the argument,) in his report predicates the right of the State of

California to admission into the Union on these points: First, that there was a government *de facto* there, and that, acting through this *de facto* government, the people had establshed a State government, and asked admission into the Union. Such is the history of the case. He employs this language:

"It also appears, from the proclamation of General Riley, acting Governor, to the people of California, dated June 3, 1849, that the government *de facto* was constituted as follows: * * * * * * * * * * * * *

"On the 3d of April, 1849 President Taylor appointed Thomas Butler King agent, for the purpose of conveying important instructions to our military and naval commanders who were intrusted with the administration of the civil government *de facto* in California."

Thus predicating his whole argument on the double idea that the people had acted, and acted through a government *de facto*. Had you not a government *de facto*, as regular, as legal, as just, in the case of Kansas, as you had in California, even if you admit that in its origination frauds were committed, force resorted to, and external aid brought to bear? Now, sir, here is a government *de facto*. They proceeded to call a convention. So in Kansas; there was a government *de facto*, and they proceeded to call a convention. The Senator from Vermont says, however, that it is not a legality. Let us see what the Senator from Illinois says upon that subject; for I love to answer one of my oponents with the language of another. The Senator from Illinois, speaking of the action in California, says:

"But there is not an irregularity in the case of California which has not occured and been waived in the admission of some new State into the Union. If the Senator will point to me any irregularity in the case of California, I will point him to a corresponding one in the case of some other State which has been received into the Union." * * * * "I hold that the people of California had a right to do what they have done; yea, that they had a moral, political, and legal right to do all they have done."—*Appendix to Globe*, 1850, *page* 1523.

So that the action of the people of California, being subordinate to the government *de facto*, was a legal action. The action of the people of Kansas, being through the constituted authorities, and a government *de facto*, was clearly legal action. This, like other complaints which have been gotten up since the first day of December, seems to be an afterthought. Read the Springfield speech of the honorable Senator from Illinois. Would he have spoken in such terms as he did with reference to the expected action in Kansas if he had looked upon it as a mere farce—that people could have stayed away if they pleased? Did he say so then? I desire to read it. It has been read frequently. I wish to incorporate it in the proper connection as it bears on the proposition I am discussing. I ask my friend from Indiana to read it for me.

Mr. BRIGHT read as follows:

"Of the Kansas question but little need be said at the present time. You are familiar with the history of the question, and my connection with it. Subsequent reflection has strengthened and confirmed my convictions in the soundness of the principles and the correctness of the course I have felt it my duty to pursue upon that subject. Kansas is about to speak for herself through her delegates assembled in convention to form a constitution, preparatory to her admission into the Union on an equal footing with the original States. Peace and prosperity now prevail throughout her borders. The law under which delegates are about to be elected is believed to be just and fair in all its objects and provisions. There is every reason to hope and believe that the law will be fairly interpreted and impartially executed, so as to insure to every *bona fide* inhabitant the free and quiet exercise of the elective franchise.

"If any portion of the inhabitants, acting under the advice of political leaders in distant States, shall choose to absent themselves from the polls, and withhold their votes, with a view of leaving the free-State Democrats in a minority, and thus securing a pro-slavery constitution in opposition to the wishes of a majority of the people living under it, let the reponsibility rest on those who, for partisan purposes, will sacrifice the principles they profess to cherish and promote. Upon them and upon the political party for whose benefit and under the direction of whose leaders they act, let the blame be visited of fastening upon the people of a new State, institutions repugnant to their feelings and in violation of their wishes. The organic act secures to the people of Kansas the sole and exclusive right of forming and regulating their domestic institutions to suit themselves, subject to no other limitation than that which the Constitution of the United States imposes. The Democratic party is determined to see the great fundamental principles of the organic act carried out in good faith. The present election law in Kansas is acknowledged to be fair and just—the rights of the voters are clearly defined—and the exercise of those rights will be efficiently and scrupulously protected. Hence, if the majority of the people of Kansas desire to have it a free State, (and we are told by the Republican party that nine-tenths of the people of that Territory are free-State men,) there is no obstacle in the way of bringing Kansas into the Union as a free State, by the votes and voice of her own people, and in conformity with the great principles of the Kansas-Nebraska act; provided all the free-State men will go to the polls and vote their principles in accordance with their professions. If such is not the result, let the consequence be visited upon the heads of those whose policy it is to produce strife, anarchy, and bloodshed in Kansas, that their party may profit by slavery agitation in the Northern States of this Union. That the Democrats in Kansas will perform their duty, fearlessly and nobly, according to the principles they cherish, I have no doubt; and that the struggle will be such as will gladden the heart, and strengthen the hopes of every friend of the Union, I have entire confidence."

Mr. GREEN. Now, sir, I have had that speech read because in the connection I am now speaking it shows he then regarded it as a proceeding that would be binding, perfectly obligatory, and was anticipating that some of the contumacious would stay away and not vote, alleging at the same time that they would be equally bound as though they had appeared at the polls and voted. That shows that he regarded it as a legal proceeding. That speech was made on the 12th of June, three days before the election held under the election law of Kansas, and hence when he takes another position, on the first day of December, it seems to me—I will not impute to him any motive—to have been entirely an afterthought. So understood the whole country; so understood every friend of the Kansas-Nebraska bill; so understood the President, and all of the party that sustained him; and never until some subsequent proceedings were had, was any complaint ever uttered. It was a legal proceeding. It is easy to demonstrate, in addition to what I have said, that there is full legislative power, including the power to call a convention at the instance of the people, to form a constitution preparatory to their admission into the Union; that it was with this view, as stated by the Senator from Illinois, that the organic act of the Territory was first passed to enable them to prepare for admission under the clause of the Constitution, which says that Congress may admit new States. It then results that the voice of the people, fairly expressed, demanded a change of government from that of a territorial to that of a State. There was no pretence of fraud at that time; no pretence of any invasion from Missouri, or from the Camanches of the West; no pretence of improper influences; all was admitted to be fair, regular, just, and proper. The first step in the proceeding, then, is a legal step of the people in the exercise of their power. Ah, says the Senator from Vermont, they will have no power until Congress enables them to come into the Union.

Mr. COLLAMER. I did not say that they had not power. They had the power to meet and petition, and all that.

Mr. GREEN. Did you not say that they had no power?

Mr. COLLAMER. Not *authoritative.*

Mr. GREEN. I understand the Senator. He spoke of their political rights, because there is a difference between a mere physical act and a moral and political right. They have a physical ability to gather in mass meeting, and utter expressions, if they have the power of articulation, and physical power to draw up a petition and present it to Congress.

Mr. COLLAMER. And a political right.

Mr. GREEN. And a political right to present it. But what political right have they to form a State government at any time? Never till Congress says so? He shakes his head. Can they do it before? Can they do this before Congress passes a provision giving them power to do so?

Mr. COLLAMER. They may meet, form a constitution, and present a petition to Congress with the constitution for admission under it; but it is for Congress to say whether they will admit them in their discretion.

Mr. GREEN. There is no difficulty about this subject when we come to a proper understanding. The admission of a State is one thing; the formation of a State another. Congress cannot form a State. Congress, therefore, cannot give power to the people to form a State; for they cannot confer a power they do not possess. If, then, there ever is a power in a Territory to form a State, from whom is it derived? Not from any sister States, because they cannot create another State; not from the Federal Government, because it cannot create a State. Then, from whom is derived the power to create a State? From Heaven; that is the source of the power. An enabling act was given to the people by Him, and Him only. It has been held by the wisest statesmen in this Government that life, liberty, and the pursuit of happiness are the inalienable rights of man; and that to secure these rights, governments are instituted, deriving their just powers—from whom? From Congress? From a sister State? From an enabling act? No; but deriving their just powers from the consent of the governed, and whenever the consent of the governed is given, the just power has been conferred, and they (the governed) are the people of the Territory. They cannot, however, force themselves into the Union. That Territory belongs to all the States, and Congress is the administrator of it. The people of the Territory cannot appropriate the public lands to themselves. They cannot oust the rightful jurisdiction of the Federal Government. Therefore, an assent, either by admission or otherwise, must be given by Congress before the independence, the sovereignty of the State becomes complete; but the power to form a government is an original inherent power which they may of right exercise when their numbers justify.

If they may thus exercise it; if it be an original power; if it be an inherent power; if it be an inalienable power; then it is a legal power. True, they cannot establish a government that would abrogate the Federal power. They cannot be brought into collision with Congress, because as the ownership of the Territory is in the States, and jurisdiction over it is in Congress, the assent of Congress must be had either before the formation, or after the formation of the State government, and the one is as regular as the other; as the past history of the Government proves.

In the next step of this proceeding, (for that territorial government has been indorsed by Congress, all the authorities of this Government,) the Territorial Legislature passed the convention act—that one of which the Senator from Illinois spoke, when he said it was just and fair in all its provisions. It provided for a registry; a registry was taken—fairly taken. Those objections which have been urged to it have been so completely and so fully and so often answered, that I really do not like to stop and do it now. I have answered them; my colleague has answered them; the Senator from Georgia (Mr. Toombs) has answered them; various other Senators have answered them; and the Senator from Pennsylvania (Mr. Bigler) has answered them; proving the employment of terms by our opponents in this question, which may not be designed, but which are calculated to convey a false impression to the public mind. They say, generally, nineteen counties only were registered, and nineteen unregistered. Now, the employment of language like that—I will not say is designed—but it is calculated to make the public at a distance—not in the city of Washington—but the public at a distance—believe that half the people were disfranchised, when there is not one word of truth in it.

Now, if we desire to investigate, according to the facts, and present the facts to the country, why do we not speak of the people? Did you want unpopulated counties represented in convention? I thought it was the people whose rights you talked about protecting, and not the barren hills and wastes, the prairies and the swamps. They have no voice in it, and ought not to have any. They are the creatures for the use of man, and not the masters; they are to be used by man, and are given for his accommodation and benefit. All of the nineteen counties that had any inhabitants at all were attached to other counties, except two or three, and from them the registry officer was driven off. This is established by abundant evidence. In all of them only one thousand four hundred and twenty-three votes were given at the 4th of January election under a qualification of voters which would not have permitted them to vote for the delegates to the convention. The qualification for those who should vote for delegates to the convention was, that they should be citizens of the United States, and residents of the Territory on the 15th day of March. The qualification of those who voted on the 4th of January was, that they should then be inhabitants of the place. Now, if, with this broader latitude, with this free license for people to come in, through the influence of the emigrant aid societies, with all the machinery of importation, they could at this later period only manufacture one thousand four hundred and twenty-three votes, when there was no restraint of law as to the number polled, how many could that same locality have polled with the qualification required under the convention act on the 15th day of June preceding? I am assured, by good authority, not over five hundred. So that it dwindles into mere insignificance. But, whether large or small, whether great or little, it resulted from their own acts, as is proven by the testimony of Secretary Stanton and others.

Then the convention is elected. It legally assembles. It performs its work. The people adopt the constitution finally, as they had a right to do, in pursuance of the principles incorporated into the organic act, as Senator Douglas, in his own language, asserts they were to settle these questions for themselves, by represenatives chosen for that purpose. Not by a direct vote of the people; not by a subsequent submission to a popular vote; but,

though he attributed that idea of President Buchanan to his absence from the United States, as a fundamental error, still his own report says they are to settle it by their representatives, chosen for that purpose. Just in that way the people of Kansas did settle all questions pertaining to their domestic institutions, except the question of slavery; and that question was submitted to a subsequent vote of the people on the 21st of December.

What is arrayed against all this? What imputation is made against this proceeding? What is to lessen the force of it? Why, says the Senator from Vermont, (Mr. FOOT,) there were broken pledges; they had a right to stay away and not vote; they had assurances from the President, assurances from Governor Walker, assurances from Governor Stanton, and pledges from the candidates, that the constitution, when framed, should be submitted to them for ratification or rejection. I called upon the Senator at the time, and requested him to favor me with the evidence of his assertion. He did not have time to produce it then, but I suppose he will, *if he can*, at a more convenient season. The Senator from Vermont (Mr. COLLAMER) went off and hunted up a little item, and brought it up here for his colleague, but that does not even reach the case. I know, and the country knows, that Governor Walker preferred that the constitution should be submitted; but Governor Walker never did assume to *pledge* to the people that it should be submitted. Mark the difference. Governor Walker says to them, if the convention does not submit the constitution, I promise you I will oppose its *adoption;* but that very assertion shows that he understood the convention were not bound to do it, for it implied a doubt whether they should submit it or not. Do you tell me that amounts to an assurance that the constitution should be submitted? There is nothing like it on the record; and when gentlemen make the assertion, they make it without any evidence upon which to found it. Even Governor Walker, with his strong proclivities to invite the action of emigrant aid societies to rush out a population to vote down the constitution or vote out slavery—even he, in his own zeal, never undertook to pledge to the people that it should be submitted to them for a vote. He preferred it, he advocated it, he urged it; but he had no power to pledge that it should be submitted, and he never did.

How is it with Governor Stanton? Governor Stanton, on the contrary, said expressly and explicitly that the distracting question of slavery ought to be submitted, and that was as a mere question of policy. Now the convention, I suppose, had more confidence in Governor Stanton than in Governor Walker. I presume so from their action; for they acted on the suggestion of Governor Stanton, adopted the constitution finally in all its branches, and in all its parts, except the article on the subject of slavery, and that they submitted to a vote of the people. But neither Governor, nor Secretary, nor President, nor anybody else, had any right to dictate to the convention any part of their action, either in the form of the constitution, or the mode of its adoption.

The election took place on the 21st of December, and the character of that election is a great bone of contention. I can show, by Governor Walker's own position, that the question which constituted the real matter of controversy was, shall there be slavery or no slavery? Is there anything else in controversy before the Senate? Is there anything else that stirs up the least feeling, even in the Republican party, save and except this slavery

question? Not one particle. Everything else is hunted up with eager anxiety merely as make-weights, as it seems to me; but there is not one single valid objection pointed out. On the 21st of December, then, the question was submitted. To disfranchised counties, or to but nineteen counties? No; but submitted to every county in the State, submitted to every citizen of the State, whether he had been registered or whether he had not been registered. I have before said that those who failed to register themselves committed a wrong in their own light. But the Senator from Vermont said that the argument reminded him of an anecdote of a boy who could not count the pigs because one of them kept running about all the time. Now, if that pig had to give his name to be registered, and would not do it—what then? How register him?

Mr. COLLAMER. Count him.

Mr. GREEN. But if the law says that he should give his name to be registered, so that when he came up to vote it might be known whether he was entitled to do so or not, how could you ascertain his name without he gave it? That is the cause of all the difficulty. Now, it is a fact not to be controverted, that they did refuse to be registered, and the imperfect registration was the result of their own wrong. But whether right or wrong, whether it was the fault of the officers or the fault of the people, when the great question was submitted, whether registered or unregistered, whether entered upon the poll-list or not entered upon the poll-list, all were allowed to come and vote. Why did they do it? It is said they anticipated fraud. Anticipated fraud! A majority anticipate that a minority would whip them! It is not a part of the American character; nor do I believe that to have been the reason, nor does anybody here on either side believe it; but if true, it amounts to no excuse.

But, says the Senator from Illinois, why did they not submit the whole constitution? He answers the question himself by saying the only reason given, was that it would be voted down. Who said so? Why, the Senator from Illinois, and, I believe, the Senator from Michigan. Who else said so? Did the people of Kansas say so? Some *one* of that convention may have said so; but the convention itself, as a convention, never put its action on any such ground. To represent them as being influenced by such a consideration when you have not the slightest evidence, I say is neither legitimate nor logical.

But assumptions have been made from the beginning of this discussion down to the present time; and no more gross assumptions have been made by any Senator, than by the distinguished Senator from Kentucky. Why, said he, this election was all very fair on its face, but gross frauds have been perpetrated. That Senator is a distinguished lawyer; he knows the force and weight of evidence; but if he referred to anything that would be received as evidence before any justice of the peace in any county of his State, I should like to have it pointed out. Why, said he, both the Governors have given it as their opinion that a large majority of the people of the Territory are against the constitution. Talking about legal proceedings, the Senate of the United States having a constitution, adopted according to law, brought before them, it is to be overruled, broken down by the *opinion* of two gentlemen who rode through the country! Why, sir, will a lawyer assert that to be evidence at all? When did they give that evidence? Since they fell out with the Administration, and joined the enemy. It is no evidence at all, and comes in a very questionable shape.

Again: the Senator from Illinois says this constitution does not meet the will of the people. Where is the evidence of that? Why the Legislature elected in October passed resolutions protesting against its reception and admission. Does that prove that the constitution does not meet the will of the people of Kansas? Does he know that, when that Legislature was elected, the constitution had not been formed? That Legislature was elected in October; the convention had not then formed the constitution. Did they condemn it in advance? Did they reflect the will of their constituents? The question had not been before the voters of the Territitory to say whether they approved that constitution or did not approve it; and, consequently, the Legislature elected could not possibly represent them and reflect their will on that subject. It is worse than idle, it is absolutely ridiculous, to say that the Legislature elected in October, before the constitution was formed, could express the will of the people on that constitution. The convention, chosen by the people to make the constitution, can better reflect the will of the people than the Legislature chosen for a different purpose.

The people elected that convention to make a constitution. They had not then performed their work. They elected a certain set of men to go to the Territorial Legislature. Subsequent to that election the people's convention did form a constitution, and the Legislature undertook to pronounce judgment upon the work of the people's representatives. Does that afford any evidence that it would be condemned by the people? I cannot so understand it; nor do I believe that any man who will turn his attention to it for one moment will believe it is entitled to any weight or consideration whatever. Even the Senator from Illinois, following the example of the distinguished Senator from Kentucky, says, "Ask the Governors what the will of the people there is." Is that to have any weight? I submit, with due deference to the longer experience of the distinguished Senators, that the way to ascertain the people's will is not to ask their Governors what it is. Can you have the people's will except when collected in the form of law? Will you look at a mob, guess at its size, and say that that overrides a legal vote? You sanction that principle when you undertake to repudiate the action of this legal convention, because a Governor may have said he rode through the country and counted so many stumps and so many cabins, and he was inclined to think the majority was on that side. I trust such arguments will never be made here again. Moreover, the Governors were not chosen by the people, while the convention was, for the direct purpose of making the constitution, and their action is the best evidence of the people's will.

The Legislature of the Territory was not chosen for the purpose of expressing the will of the people on the constitution; neither was the Governor, who was appointed by Federal authority.

But the great question, it is said, is, does the constitution embody the people's will? Now, I come to the point which I have been incidentally noticing for some time. Their will is collected only through the forms of law. But, says one Senator, we do not object to these forms of law, but we go for the equity of the case. Well, what is equity? First, equity follows the law; second, the rules of evidence in equity and law are the same If in law your evidence would not be admissible, neither will it be received in equity to ascertain the equity of this case. Flying reports, wild guess, visionary imaginations, are to be brought up to weigh down legal evidence, by

old experienced lawyers and statesmen. I am astonished at it. There must be an impelling power behind to rush them into error so gross, else it could never be done. What that impelling influence is I know not. In the United States of America, distinguished for its endeavors to protect the people's rights, there has never been but one rule to collect the people's will—by a legal proceeding. The moment you depart from this rule, when you next have an election of President of the United States the ballots will be cast, the votes will be counted, the electors returned, and a wild cry will be raised outside of this Capitol—Governors A, B, C, or D will say that an immense majority of the people of the United States were opposed to the President. They will say he does not represent the public will; that a majority are against him. I have already heard it said that Mr. Buchanan is a minority President, that Mr. Pierce was a minority President. Take one more step, incite the people in their frensy to go one inch further under the example intimated here that you may guess at numbers, and not take the people's will in the forms of law, and you will have bristling bayonets and threatening cannon pointed at the walls of your Capitol to displace those legally elected to put in the mob and the candidate of the mob. It is fraught with a danger that demands the most serious reflection. We should pause before we set an example so calamitous in its tendency.

Does this constitution embody the people's will? I say, yes; and when I answer, I predicate my answer upon that which cannot be controverted or gainsayed. When the Opposition answer, it is a loose, unsupported assertion. But the question, does it embody the people's will? comes back with all its force, again and again. What is the test? Were there disfranchised counties where members were not elected? That does not affect it. There were but very few people in them, and nearly all the people were registered—all were, that desired it. You cannot compel a man to vote. You ought to give all the privilege of voting; and having the privilege, if they refuse to vote, the consequence must rest upon their own heads. Take the case of Iowa, to which the Senator from Kentucky referred——

Mr. CRITTENDEN. Not Iowa; Wisconsin.

Mr. GREEN. I thought it was Iowa to which the Senator referred.

Mr. CRITTENDEN. No, sir.

Mr. GREEN. I think I am correct, and the Senator will see that I am correct in a moment. He was upon the point that a constitution was formed by them, and the boundary, or some other part, was not acceptable to Congress. Congress said to them, you may come in, if you conform your boundary to the northern boundary of the State of Missouri, and comply with certain conditions. The constitution went back to the State, and Congress never heard anything more of it; and I will tell you why. The people voted it down. Congress undertook to change the boundary which the people had inserted in the first constitution, and to prescribe terms to them. They voted down the proposition which Congress made to them, and subsequently formed a new constitution; but when they did come into the Union, what was the evidence that it embodied the people's will?

Mr. HARLAN. Will the Senator allow me a moment?

Mr. GREEN. Certainly.

Mr. HARLAN. Congress prescribed no new boundary to Iowa, as the Senator will see by examining the act.

Mr. GREEN. It prescribed some conditions which they repudiated. How was the second constitution received? By a submission to the people. What was the vote upon that? Now you want clear, unmistakable evidence that the constitution embodies the people's will. In the case of Iowa, over nine thousand four hundred and fifty voted for the constitution, and nine thousand and sixty voted against the constitution, and three counties were disfranchised. If the votes of those three counties had been brought in, and counted in the negative, they would have overturned that majority. Yet you see the forms of law were observed. One of those counties, which seems to be rather remarkable, was named Buchanan; not a vote was received from it. There were two other counties from which not a vote was received; but yet it was their own negligence. The law afforded them the opportunity, and if they did not avail themselves of that opportunity, they were bound by the decision of those who went to the polls and voted. So in Kansas; so in California; so in every instance. I believe there never has been a vote taken in the United States in which every man participated who was entitled.

Take the case of the recent amendments to the constitution in the State of Pennsylvania. I am informed by the Senator from that State that they can poll about five hundred thousand votes in the State. Last year they adopted some amendments to their constitution, less than one hundred and forty thousand voting. The highest vote that any amendment received was one hundred and sixteen or one hundred and eighteen thousand. Yet it was the will of the people—the legally expressed will. Those who do not think it proper to come forward and exercise the rights which are extended to them, are bound by the decision that is made. Deal with Kansas on the same principle; extend to her the same rule of action, and you will be estopped from finding any fault or making any complaint. But every time they hear this word estopped, a cold shudder seems to run over these Republican Senators. Estopped! They say that is the lawyer's plea. I trust we are not opposed to law and order. I trust we will ever act on the legal rules established by centuries of experience, by enlightened human reason, as best calculated and designed to protect the rights of the people. On those we ever act; and when we depart from them, we will be not only at sea without rudder and without compass, but we will be in a terrific storm driving us upon the rocks of destruction.

But one of the great and important points—it looms up with great magnificence in the Opposition here—is the vote on the 4th of January. After the constitution had been finally adopted, and was complete, on the 21st day of December, after the work of the convention had been consummated, a Legislature meets—not appointed for that purpose, not selected for that purpose, because when they were elected, in October, the constitution had not been formed—but in spite of that, without instruction from the people, without authority from the people, they undertake to defeat the will of the people by ordering a subsequent election. I would like to know if I could dare to ask that question, who gave instructions out there to give up that vote? Whence did the orders emanate? Who sent them the advice? It makes no difference to me how it originated, its consequences are just the same; but, as a matter of curiosity, to go into and fill up the vacant spaces in the history of this strange transaction, I would like to know who issued

the orders. Had that Legislature the power to order an election? Why, say Senators, it had as much power over the subject of a constitution as had any preceding Legislature. I say they had not. I have before stated to you that the source of power was the people, not the Legislature. They only make use of the Legislature as a legal instrumentality to collect the people's will. The people instructed the Legislature to call that convention. The people had by a direct vote, said, we want a State organization. Therefore, when the Legislature met, they were but doing and performing, in the language of the report, "a ministerial act," providing a fair, just, and equitable method for the people to exercise their rights, and elect delegates to form a constitution. When that convention assembled, it was, in contemplation of law, according to all ideas of representative government, the people of Kansas; and could no more be interfered with, stayed, checked, or controlled in its action, than could a convention in one State be controlled by a Legislature in another. The Legislature of the Territory, after this constitution is adopted, undertakes to set it aside; undertakes to make a submission in a manner that must set it aside, and for the design of setting it aside, if it could have any legal effect whatever. But who ever heard of a State constitution being thus submitted?

Now, if I have been successful in proving that the steps taken there were legal steps, were usual steps, were proper steps, all of them ended in the consummation of the instrument on the 21st of December, and it was then a fixed fact and a constitution of a State—not in the Union, because it cannot be in the Union without the assent of Congress. Then, being a constitution, thus formed and emanating from the people, it could be no more interfered with than could the constitution of the State of New York be voted down by submitting it to a vote of the people. What would any Senator think if he should hear it stated that in his own State the Legislature had said, "we will see whether this is the constitution or not, and we will submit it to a vote of the people?" Suppose the constitution had been performing its functions for twenty years, yet that once somebody, like the sentimental German mentioned by Mr. Webster, should say, "an idea strikes me; let us see whether our constitution embodies the people's will; and let us submit it to a vote of the people." When the Senator from Kentucky holds forth the idea it strikes me with real astonishment. I had not learned in the same school. He uses this language:

"Was it not of consequence, was it not of importance, to know the will of the people, whether they really did approve of this constitution which was about to be offered to Congress—a law which, when Congress puts its *imprimatur* on it by admitting the State, is to be permanent? Would it be any harm to take the vote over and over again? What objection could there be to it? You might have said, 'it is an unnecessary care of the people's rights; you have had their decision once; therefore, it is not necessary to have it again;' but out of abundant care and abundant zeal you may choose to take it again and again, and ascertain whether there may be change or variation in the public opinion. Where is the man who can say aught against it? Do you object to it because it is taking too great care of public liberty? paying too great respect to popular rights? Nobody will take that ground."

According to this idea of the Senator, although a constitution may be fairly and finally adopted, yet we should adopt the principle of saying there may be a change of opinion, and we will take the sense of the people again and again and again upon it. After Kentucky has adopted a constitution, and the people have lived under it for years, would it be in the power of any one all at once to say, "an idea strikes me; I will see whether

this embodies the will of the people; let us take the vote again and again and again." You can with as much propriety do it in the one case as in the other. If that convention adopted a constitution at all, you could no more interfere with it than could the Legislature of Kentucky interfere with their constitution by saying, "we will ascertain again and again whether the people now approve of it." It is contrary to the principles of government. Take the case on the election of the smallest officer in the smallest municipality. Even in the election of a constable, could any one the next day after the election say, "let us try this over again, and see if there is any change;" and the day after that say, "let us try it over and over again, in order to see if there is any change in public opinion." I expect Colonel Fremont would like to have adopted the doctrine of the Senator from Kentucky, in order to try the presidential election over again. (Laughter.) I remember when I went to school and played at marbles, the boys used to cry "slips" on me, in order to try it over again. When a power has been exercised according to law, there is no power to try it over again except by pursuing all the customary legal steps requisite to reach the same end.

But to create doubt, to excite suspicion, to generate distrust, and make men afraid to do their duty, the Opposition insinuate and charge fraud. I have heard the cry of fraud so often, that I would almost think the old maxim had been adopted—I do not apply it to Senators—but a very distinguishing man once said, a lie well stuck to and oft repeated was as good as the truth. Fraud? What fraud affecting either one of the elections relating to the adoption of this constitution? I challenge any Senator to show it. What fraud? Was there fraud when the people voted and said in an emphatic voice, we want a State government? It was not alleged. Was there fraud when the people of Kansas elected delegates, and sent them up to a convention to make a constitution? Neither has that been alleged. Was there fraud affecting the validity of the decision on the slavery question on the 21st of December? That is not alleged.

It has been said by the Senator from Kentucky that some two thousand of the votes cast on that day are believed to be fraudulent votes. Suppose they were; it leaves the question unaffected. The Senator from Georgia well answered that objection. But what is the evidence that there were any fraudulent votes? Why, says the Senator, the President of the Council, Mr. Babcock, and Mr. Deitzler, Speaker of the House of Representatives, both say they rode through the country, and did not see cabins enough to hold the people who voted. Look at the character of the evidence. Here are two men, called voluntarily—not in the performance of duty in obedience to law, without any jurisdiction over the subject—to see the fairness of the opening and counting of this vote; and they say there were six thousand seven hundred and ninety-five votes cast. They then volunteer a statement in regard to some of the votes. Who are they? Bitter enemies of the constitution—men who have been classed in the secret legion—men who have been arrayed against all government—men who have doubtless taken the secret oath reported here as being dicovered and brought to light, and embodied in this report by Senator DOUGLAS—an oath by all means to accomplish their nefarious ends. That class of persons, standing out in rebellion, standing out in defiance of law, standing out in opposition to Federal authority as well as territorial authority, with a sworn purpose to defeat that State organization, with a sworn purpose to

defeat that constitution, who have taken an oath to prohibit slavery—they are the witnesses called upon by the honorable Senator from Kentucky. They volunteered a statement, and made a statement, not in the discharge of any official duty; and the statement itself shows that they knew nothing about that of which they spoke; for they say, we have been through those counties, and are satisfied there is not that number of people there.

Why, Mr. President, it is a fact known to those familiar with the subject, that in Johnson county there was a reservation of land for the Indians of about double the quantity to which they were entitled under the treaty. It was discovered; and citizens, before it was opened up to settlement by the operation of the Department, went there, and made their locations all over it. They could not live on it, because it is prohibited under the reservation; but it would ultimately be open to market. Those holding claims, could not make permanent improvements, and perfect them, and were compelled to live in the small towns around, and watch their claims, until the reservation should be opened by the Department.. That is the secret of this whole matter. There was not fraud there. As Governor Walker has well said, there was no danger of Missourians undertaking to influence those elections; there was no danger of Missourians going over there, and voting. I have his evidence in this document to vindicate them from the charges that have been so unjustly heaped upon their heads.

But was there no fraud at the election on the 4th of January? Yes; there was. There can be no qusstion about that. They cast more votes than they had in the whole Territory on the same day at the same voting at a hotly contested election. On the constitution there was no contest at all. Our side did not vote at all on that question; the constitution being finally adopted. We stand upon our rights and we do not intend to be trifled with, said the Democratic party. I do not mean pro-slavery men only, for there are hundreds of men from the Northern States who are in favor of a State organization, and then, if subsequent events should show that they ought not to have slavery, to change the constitution, who will act shoulder to shoulder with us and do do it. They said the constitution being finally adopted, we will not attend the polls. Hence these same people who could only poll for State officers, at a hotly contested election, six thousand two hundred and thirty-eight votes, at an election where there was no contest, polled ten thousand and sixty-four. What do you think of them? Why was this? There was no difference in the qualification which the voters should possess in order to exercise the elective franchise. What constituted the difference in numbers? This: at the one place they were watched, there was a contending party arrayed against them; in the other case they were not watched and put in as many votes as they pleased. We know they are a class who are in the habit of making use of fictitious names; and that is proved by Mr. Secretary Stanton. If a man will use a fictitious name for one purpose, as we have proved it on him, will he not do so again for another purpose?

It is also known that over four hundred came from Lawrence and voted at that day in Leavenworth. This is shown by the Lawrence vote. The vote at Leavenworth was four hundred larger than was their actual vote. The vote for State officers at Lawrence fell off a corresponding number; and yet, on the vote on the constitution at Lawrence, they gave more votes than they ever gave in their lives before. They involve contradiction; they involve absurdities; and when we see their course, as portrayed by

Governor Stanton and Governor Walker, we have a right to regard them as spurious. I care not, however, if they were the most legal imaginable; I care not if you prove them to be the *bona fide* citizens voting; it was voting on a subject previously decided, and I trust that this Congress will never set an example which would induce the people to say: "we will call an election on a day not appointed by law, when a question has been finally decided, and we will then vote just as many votes as we please." It is well known that, if this principle was to be sanctioned, the subsequent election would always prevail. Knowing exactly how many votes were previously cast, knowing what they had to work up to, they could of course manufacture a majority, and thus lead to fraud, to violence, and bloodshed. The character of those persons may be pretty well understood from what I have quoted in the report presented to the Senate; but, as still better evidence upon the same subject, I beg leave to have read an extract from a speech delivered in New York, June 11, 1856, by the very distinguished Senator from Illinois.

The Clerk read as follows:

"On the other hand, in Kansas you find that the New England Emigrant Aid Society, through pauperism, with a capital of $5,000,000, undertook to regulate the Territories fifteen hundred miles off, and to control their liberties, without respect to the rights, wishes, and interests of the people of the Territory. This foreign interference on the part of the Free-Soilers; this foreign interference by corporations from New England to regulate Western affairs, has created in Kansas what every man had a right to suppose it would create—civil war, dissension, violence, and bloodshed. For every drop of blood that has been shed in the Territory of Kansas, the 'Black Republican' leaders are responsible. (Loud cheers.) It is a part of their line of policy to get up civil war there, and then make political capital out of the innocent blood shed by their tools and dupes, for the purpose of promoting their candidates in the Presidential election. What is their excuse for not obeying the law in Kansas? They tell us that the laws enacted by the Territorial Legislature are barbarous and inhuman!

"Out of a volume of at least a thousand pages, containing innumerable enactments, applicable to every relation in life, and protecting every interest in society, yet out of that long list of laws relating to all the affairs of human concern, only two short enactments have been specified as being either unjust or improper. One of them relates to the question of slavery, and the other regulates the affairs of elections. It is worthy of remark, and should never be forgotten, that under neither of those laws has any one case yet arisen—no one case has arisen under those two laws which are objected to as being improper. No case has ever arisen, no writ has ever been issued, no trial has ever been had, no act of violence has ever occurred, under either of these two obnoxious laws. Then, what excuse is there for that violence? Why, these men, these Abolitionists, these 'Black Republicans,' send out their agents there to get up strife and bloodshed, to be copied into the Abolition papers here for political effect. Contributions are taken to buy Sharpe's rifles, and to send men out there to resist the law.

"Preachers of the Gospel, instead of expounding the Holy Scriptures, convert the house of God into a recruiting office for brigands to go to Kansas to stir up strife and civil war, in order that the Tribune, Times, Post, and other Abolition papers here may portray the horrors of the border ruffians. These men, sent out by your Beechers, by your Sillimans, by your Theodore Parkers, by your Garrisons, go into Kansas, burn innocent people's houses; and when the court issues a writ against the house-burner, and when the sheriff goes to execute that writ, they shoot down the officers of the law; screen the house-burner from the penalty of the law, and protect him in his violence, and then talk of the consequences and effects of the Nebraska bill. Every act of violence that has occurred in Kansas in resistance to the officers of the law, has been either house violence, murder, breach of the peace, or some other crime recognized as such in all civilized countries; but the 'Black Republicans' have protected the criminal in his lawless course."

Now, Mr. President, that is presented as evidence to show the character of those who have gotten up the opposition, who have managed the opposition, who have controlled the opposition. Senator DOUGLAS well portrayed them. When the Senator from Kentucky says the last expression of the people ought to prevail, I must say to him that, with some qualification, it is correct. The last legal expression on the subject, properly submitted to the people, on which they have a right to vote, ought to prevail, and will prevail; but a subject having been completely decided, no other proceeding can be instituted to undo what has been done. Even when they did attempt to undo it, it was by the use of instrumentalities like those portrayed by the Senator from Illinois. They sought to get up strife and bloodshed to fill the columns of the Tribune, his present friend and supporter, the Post, and other papers in the Northern States, to manufacture capital for political purposes. I hope the Senate and House of Representatives will take a course to remove these means if they desire to make use of them for electioneering purposes, and to quiet the subject forever.

But, sir, it has been said that the Legislature instituted a commission to go around and collect evidence to prove what frauds have been committed at the various elections; that this commission has been perambulating the country collecting the facts, and that these facts sustain all the charges of fraud. I said many weeks ago that I had no doubt of the fact that in most of the elections of the United States, frauds to a greater or less extent are committed. It is because of the imperfection of man. If he were perfect, there would be no difficulty, and he would need no law. But what I have ever said, and what I will adhere to, is that no fraud has been established affecting the validity of this constitution. If there were frauds in the October election, they do not affect the constitution adopted by the people; if there were frauds in the election on the 4th of January at Delaware Crossing, they do not affect any of the proceedings in the formation of the constitution; if there were frauds at the election on the 21st of December, they do not affect it, because there was majority enough without even the alleged fraudulent votes. Why, then, shall we stop to inquire about the proceedings of that commission?

But, sir, the whole action of that commission is null and void, and entitled to no consideration for various reasons. First, the legislative authority that created that commission had no jurisdiction over the subject they undertake to investigate. They had no jurisdiction over the election of the 21st of December. They had no jurisdiction over the other elections. All that they could do was to test the legality of their own election. Having no jurisdiction whatever on this subject, any commission they may have created is null and void, and its acts are of no weight or consequence whatever.

More than that, they could not even swear a man so as to bind him. They had not power to administer an oath; and a man sworn by them, even if he made a false statement, under that form of oath, would not be guilty of perjury. We know the instruments they could make use of, and the character of the persons they could call on for testimony. Their object was to break down the legal constitution of the Territory. That was their sole purpose. It was their declared purpose. It was not to ascertain the truth, for at one of the examinations at Leavenworth they asked a witness whether he knew of any fraudulent votes in that place? He replied, "yes, I do; four hundred came from Lawrence, and voted on your

side." "Oh," said the commissioner, "we do not want to hear a word about that." The question was asked of another, "do you know of any illegal vote being given?" He replied, "yes; forty or fifty Germans, living in Missouri, were carried over by Pomeroy, and voted in Atchison county." "Oh, hush," said the questioner, "we do not want to know anything about that."

Mr. POLK. They were carried from Weston.

Mr. GREEN. Such proceedings were common. I attach no importance to that commission for the reasons that I have assigned. They had no jurisdiction, and, therefore, their acts could have had no validity, and the oath administered by them would have had no validity. No perjury could be committed under it. Therefore, they could get their own tools to swear to what they pleased; and I am not certain that they could not get a respectable number to swear anything, even if the oath were legal—I mean respectable in point of numbers, not character.

But, Mr. President, if I were to follow on in a close examination of all this, I should consume too much time, weary the Senate, and travel over and over again the ground others have occupied so well. I shall, therefore, hasten on as rapidly as I can. It has been demonstrated that a legal constitution is presented. It has been demonstrated that there is no legal evidence to prove that it does not embody the will of the people, and that if we depart from the legal rules we are striking at the foundation of civil liberty. Why, then, shall Kansas not be admitted? What reason can be urged against it? The principal part of the Opposition on the other side of the Chamber is alone in consequence of the slave question. They are now but carrying out, when the question is first presented in its practical form, what the Senator from Illinois, with great power, said was their fixed and determined purpose in 1856. Here is what Mr. DOUGLAS said:

"What were those principles that they (that is, the Republican party) proudly and defiantly proclaimed to their opponents? They were, first, the restoration of that black line called the Missouri compromise; secondly, the repeal of the fugitive slave law; thirdly, the abolition of slavery in the District of Columbia; fourthly, the abolition of the slave-trade among the States; fifthly, the admission of no more territory or States into this Union, unless slavery was first prohibited; sixthly, the crucifixion of every man who voted for Kansas and Nebraska."

I am afraid they have crucified one by getting him in their embrace. I hope not; because I yet believe that he is not influenced in his opposition by the consideration of the existence of slavery in the constitution. I believe it; and I believe the Senator from Michigan (Mr. STUART) when he makes the same assertion; and I believe the Senator from California (Mr. BRODERICK) when he makes a similar assertion. They are governed by one principle; but they are building up and strengthening a dangerous party that exists in this country, whose fixed purpose is to admit no more slave States. The first time that practical issue is presented, we find the Senator from Illinois, our old leader, who has fought so many gallant battles, and gained so many brilliant victories, going over on that issue which they tender, though he may be governed, and is governed, by another consideration. The motive does not sanctify the deed. In a moral sense, between him and his Creator, it doubtless does; but in a political sense, when practical results are to follow, the motive is a small matter. The deed is good or bad, according to the results that follow from it. At the time he portrayed this as the platform of the Republican party, he said:

"The Cincinnati convention had accepted that gauntlet and has negatived every one of the propositions and has proclaimed a creed which meets the cordial approbation of every Democrat in America, no matter from what point of the compass he may come."

This was in 1856. In 1858 the practical question is presented. In 1856 it was wrong to oppose the admission of a State on account of its tolerating slavery. In 1858 that question comes before the Senate of the United States, and every Republican opposes it, for, as he has before said, their creed is to oppose that admission; and he, for other considerations, not on account of slavery, coöperates in the work. Without his aid, his lead, his guidance, in this Chamber, and his friends in the other House, Kansas would have been a young sister of the Confederacy many weeks ago; and that very work which he deprecated, that very purpose which he said constituted an issue with the Democracy, he aids them in carrying out—not for the same motive and reason that they have, but in practical results it is all the same thing.

As the Senator from New York (Mr. SEWARD) announced to us, the real question is, shall any more States ever be admitted? The real question for the South is not the permanent existence of slavery in Kansas; that is but the John Doe and Richard Roe of the case. The South, of necessity, as well as the North, with the enterprise and energy of the American character, will need expansion. It must have expansion. If penned in with a Chinese wall applied only to the blacks, with the privilege of exit to the whites, when the country becomes over populated, the disparity will become greater and greater between the two races, and insurrection, civil war, and extermination will be the natural consequences. This you seek to hasten; this the Republican party of the United States proclaim to be their supreme purpose. To increase their strength, to increase their hopes, to encourage them in their prospects, our best of friends on this question, heretofore, have gone over to them. I speak it with extreme regret. I will never build up the enemy of my country, even if I do have some small objections to the proceedings of my political friends. Even if the proceedings in Kansas did not come up exactly to my notions, I would not go to the aid of the enemy, on a dangerous vital point like this, that strikes a fatal blow at the heart of our country.

My old friend from Kentucky, too, I find on that side; not for the purpose of aiding them—I know his patriotism too well to believe that—but because he has objections to the proceedings in Kansas. Well, whether he has objections ill or well founded, he should not aid in building up, and I hope he may not, a party which will, if any party ever does, divide this Union. The more especially am I astonished at him, in consequence of another reason. I understand him as being favorable to the principles of the American party. I am no American in that sense, but I have no hostility to them personally, and do not esteem them dangerous, in comparison to the Republicans. To one of their principles, at least, I heartily subscribe to; that no man ought to be permitted to vote until he is naturalized. That, however, is a question for the States, not Congress. But, sir, this emigrant aid society seeks to abolitionize Kansas; and their programme is to extend to every other Territory, after succeeding there. Here is their organization. Their purposes are declared, and the instrumentalities they intend to use are shown. Here is what they say in their address:

"Of the whole emigration from Europe, amounting to some four hundred thousand persons, there can be no difficulty in inducing some thirty or forty thousand to take the same direction," [to Kansas.]

They are to bring their appliances to bear on the freshly-arrived emigrant before he becomes familiar with our institutions and induce him to go to Kansas to abolitionize Kansas. These are the instrumentalities they make use of. The Senator from Kentucky, abhorent as he esteems that class, as much as he thinks they ought not to be permitted to participate in the Government, is to encourage and aid the very party that makes use of them to accomplish this damning deed. How far will they be able to accomplish their ends, by taking their stand at emigrant ships, and catching a newly-arrived emigrant, and before he becomes familiar with our institutions, before he becomes imbued with the character of our Government, extending to him a hand and saying: "I will help induce you to go into a new Territory about being opened, if you will keep African slavery out of there?"

They apply to him arguments like these: "The African comes into competition with your labor, and it is your interest to vote against slavery." Thus, that class are deceived, misled, many of them honestly misled. They have prejudices against slavery, and they are strengthened in it if they are taken in hand by the emigrant aid societies, whose purpose is to keep up a relentless war against slavery, and against the South. They continue to do this by making use of the emigrant, and my old friend from Kentucky still stands by them. They have done it to a great degree in regard to Kansas. We, of Missouri, from our proximity, from the facility of our settlements over the line, maintained a permanent majority in the Territory of actual *bona fide* inhabitants, and defeated their schemes up to the adoption of this constitution, and because they encouraged this sort of subsequent emigration, they now think they have a majority. I should not be surprised if they had; but up to that time we had the majority. By subsequent proceedings, making use of instrumentalities like these, they sought to prevent Kansas from entering the portals of the Union.

Mr. President, establish this as the system, establish this as the settled policy of the Government, by the aid of those of the South who may have some little peculiarity of distinction, and are called by the name American rather than Democrat, still our interest in the great question is none the less identical; and if ruin should overtake us by Southern defection, the fatal effects will fall upon all alike, while execrations will follow the faithless. It is not the importance of holding slaves in Kansas that is the great question; but the decree is to go forth from the decision of this question whether the South shall be permitted to expand as well as the North. Disguise it as you may, explain it as often as you please, proclaim it from the house-tops, and publish it from hill to hill, and from mountain to mountain, let it echo and reëcho over the valley that A, B, and C did not vote against the bill on that account, still the public judgment will stand that it was on account of slavery. Then Black Republicanism—I use the term with respect—will become bolder, and onward and onward in its career, crushing out the last hope of Democratic aid at the North; and will never find its barrier until it meets the sullen, stubborn cannon of the South.

To the Democratic party of the North, noble, bold, and true as they are and have been to us, though we may differ on some peculiarities of the proceeding in Kansas, are we to bid them an everlasting farewell? I trust

we are not; but whether we do or do not, is their influence to be cast in the scale, in a cause like this, that will be for weal or for woe to the Union? Do it, and you break down the last hope of Democracy. Do it, and that party which has held the reins of Government, under which we have prospered, expanded, progressed, as no other people on the globe have, falls powerless, scattered into forty thousand atoms. The pride, the honor, the glory of the party has been that it was not confined to the South or the North; that it was not confined to the East or the West; and I trust the time will never come when the Democratic party will be thus circumscribed. The scorching sun of the South will wither up Republicanism. It can fructify only in the snows and icebergs of the North. There is something cold in the heart that sustains it. The warm, gushing feelings of the man that sympathizes with the whole country never permits it to find a lodgment. If, on a question like this, the Democratic party is to be broken up and torn asunder—if a sectional party is to be substituted for it—if a single idea, and that idea based on the right of Government to annihilate the property of a citizen, is to predominate—the consequences will be upon those who take the fatal step. However rightful the motive may be; however praiseworthy the object, it never can be explained; the people cannot be deceived; they will know that it was on account of slavery. The moral influence of this decision will be felt as decisive action on the one side or the other. It will either be to sustain the Constitution and rights of the people, the rights of the South, and the rights of the North—for if I could bound my vision by the line that separates the slaveholding from the non-slaveholding States, I would deserve to be thrown out of the walls of the Capitol—or that party thus expansive in its views, noble in its purposes, and thereby powerful for good, will be broken down. If it is done by the aid or sanction of Southern men, the consequences to the South and North will be equally disastrous.

We are appealed to on another subject. It has been said General Calhoun has given certificates to the anti-slavery party in Kansas. Well, sir, suppose he has done so, is that a reason why you and I shall defeat a great principle? I told you in the beginning that "Kansas" is but the form of the issue, and the name of the case. Shall we sacrifice the opportunity of establishing a great principle, vital to the South, and, as far as the North depends upon the South, vital to the North?—for our interests are so interlocked that they never can be separated without injury to both. I say this is a vital question, and the principle is not to be affected by the election of officeholders there. Where is the Senator, where is the member of the House of Representatives, who will say, "I would vote to admit Kansas if my party had prevailed in the State election? I would vote to admit Kansas if the American party had been elected? I would vote to admit Kansas if the Republican ticket had been elected; but I will vote against it if the Democratic ticket is elected?" Where is the Democrat who will say, on the reverse, "I would vote to admit it, if the Democrats carried the election; but I will vote against it if either of the other parties had carried it?"

When you act upon that principle, you violate the Constitution of your country that you have sworn to support. That Constitution gives you a right to look into the constitution of a new State, to see if it be republican. It does not give you the right to go and inquire who has been elected Governor and members of the State Legislature. With the same pro-

priety you might inquire whether Governor Wise has been legally elected; whether Governor Banks has been legally elected; and you might institute a commission with as much propriety as the Kansas Legislature did, to see if frauds were committed in the election of Governor Banks, or in the election of Governor Wise, or in any State election. What right have you, then, to look into that question? None; and if not, what right have you to vote against the admission of a State merely because the newly elected State officers are not such as you approve? If the Constitution does not give you that right, you dare not attempt to exercise it.

Again: the Senator from Illinois complained, some two or three weeks ago, bitterly complained, that Calhoun was here in the city, and keeping the people still in doubt whether the Democratic ticket was elected, or whether the Republican ticket was elected. He absolutely complained of that. Last night, when he addressed the Senate, he spoke of the fact of issuing the certificates, and he complained still louder. Why these double complaints—in one case for not acting, and in the other case because he did act? It reminds me of certain persons of whom it was said they were

"Like unto children sitting in the markets, and calling unto their fellows,

"And saying, We have piped unto you, and ye have not danced; we have mourned unto you, and ye have not lamented.

"For John came neither eating nor drinking, and they say, He hath a devil.

"The son of man came eating and drinking, and they say, Behold a man gluttonous, and a wine-bibber, a friend of publicans and sinners."

He then complaind because it was not done; and, on the other hand, he now complains still more loudly because it is done. But I care nothing about it in either event. It is none of my right to stop and inquire into the election. The Constitution under which I am acting does not give me that privilege; and if I dare transgress the boundary of my right and duty under the Constitution in the one case, where shall I stop in any other case?

Now, Mr. President, I intend to close my remarks. My object has been to show that there has been no fraud affecting the legality of this proceeding. That there have been frauds in all the elections, I think highly probable; but so there have been in New York city; so there have been in Baltimore; so there have been in Louisville, where, I believe, two thousand men were disfranchised at the last election—at least it has been so reported; it may not be true.

Mr. SEWARD. Will the honorable Senator allow me to state one thing I would like to hear him upon in this connection?

Mr. GREEN. Certainly.

Mr. SEWARD. I wish to ask the honorable Senator whether the Lecompton constitution did not direct the canvass of the votes cast upon the constitution itself, and in both elections, to be made within eight days after the elections were held; whether, in regard to the question of fraud, he attaches no importance whatever to the delay which has attended the ascertaining and reporting of the results of those elections? If the honorable Senator will take it in kindness, I should like to hear him on that point.

Mr. GREEN. It does not embarrass me in the least; the subject does not require me to be bashful. The election on the 4th of January, for State officers, is a question with which we have no concern. It is an election that cannot come before us, and I should be travelling beyond my duty, and touching upon ground that does not properly belong to me, if I should

undertake to give any opinion at all upon the subject. Suppose the returns were to be made in eight days. Were they or were they not? I do not know, nor does the Senator from New York. Suppose they were not made in eight days: does that affect the legality of this constitution after it has become a finality, after it has been adopted and become an entirety? Could it affect any vote in this Chamber?

While the Senator from New York was asking me this question, the momentary pause I made brought to my mind another subject, upon which I must say a few words. It is this: it has been alleged on the other side of the Chamber that the submission of the seventh article of the constitution, including the slave clause, was not a fair submission. The people could have voted out slavery, if they had a majority, and chose to come forward; yet they say, if they had voted it out, slavery would still have been retained in Kansas as perfectly as if that article had been retained. The able and distinguished Senator from Delaware, (Mr. BAYARD,) so completely and so triumphantly answered that objection that I should do wrong to undertake to improve it. I cannot do it; it is not susceptible of improvement; it is conclusive and unanswerable.

But there is one point growing out of the same idea that I must notice; and that is, that point upon which the Senator from Illinois dwelt so long when he spoke of the right of property being older than the Constitution, and he held that declaration up to animadvert upon. He contended that it was a fallacy; and because the Washington Union published that fallacy, therefore he would not vote for the editor for a certain office. I do not complain of his action on that question. He had a right to do it. My opinion is founded on the Declaration of Independence: we hold these truths to be self-evident—speaking of the white race—that all men are created free and equal, and endowed by their Creator with certain inalienable rights; and that among these are life, liberty, and the pursuit of happiness—that pursuit of happiness includes the acquisition of property; and to secure these ends governments are instituted. What ends? Life, liberty, and the pursuit of happiness. What does the pursuit of happiness include? The lawful acquisition of one's own labor; and therefore it is before the Constitution, older than Government, and Government cannot destroy it.

I go further than that. This declaration says these are inalienable rights. What is meant by inalienable right? That which a man cannot alienate from himself: he cannot part from it. In forming a political association, the government you create has just such power as you can confer upon that government. Now, if this pursuit of happiness is one of the inalienable rights, and the pursuit of happiness includes the right to private property, and it cannot be alienated, then the government never can possess it. If government never can possess it, and a man cannot part from it, much less can a majority take it from a minority. I go so far as this: if I were in Kansas and had a horse, or a slave, or a saw-log, or a farm, or a Yankee clock, and every man in the Territory or State should vote to say that clock shall not be your property; that horse shall not be your property; that farm, or that saw-log, or slave, shall not be your property, I hold that their vote of ninety-nine thousand nine hundred and ninety-nine against me alone would not and could not divest me of my right. In the regulation of future political action in the Territory you may say we will not have a slave here; those that are here we

will set free, but we will pay you for them. He who brings them in after the law prohibits it, comes in with his eyes open, and the law, in taking the property from him, does not confiscate it—he is forfeiting property by his own act. That is the difference. No man can be despoiled of his rights by numbers. They may crush him; they may overpower him; they may trample him in the dust; but still the voice of justice will cry aloud to Heaven for redress—not for vengeance; for I never want to hear vengeance invoked in this Chamber.

In reply to the question put some time since by the Senator from New York, I will state that I am informed by a friend here that all the returns with regard to the State election were made within eight days. That is a matter *en pais*, but I had never turned my attention to it. My attention had been confined to the legal point on which I had the right to act. The Senator from New York, therefore, is now answered. They were returned within that time.

There is one point, however, that I have hastily passed over, and that is the one which the Senator from Illinois animadverts upon with so much peculiar zest—the mode of amendment of the constitution. The Senator says that, when the constitution prescribes a certain mode of amendment that mode only can be pursued; and if any other mode is resorted to, it is revolutionary. He quotes the article from the declaration of rights, to be found in the report I made to the Senate at the time the bill was presented, and he says that is a revolutionary right. He says it is like the Declaration of Independence. Here it is:

"All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper."

This, says the Senator from Illinois, is a right of revolution by war—grim-visaged war—a revolution by the sword. I answer, that such is not the interpretation; and I intend to prove, to my own satisfaction at least, the postion I take on that subject. This provision is but copied, in the language of President Buchanan, from various other State constitutions. Nearly all the States of the Union have a similar declaration in their bill of rights. When, therefore, it was put into the declaration of rights in Kansas, it was put in there with its known construction and ordinary execution and application. What is that known construction, ordinary execution, and application in the several States? I will tell you. Indiana, with a similar provision, and also a provision in the constitution which said that no change should be made in it for twelve years, called a convention and amended it before that time, not in the method pointed out in the constitution. It has been thus construed in Indiana; it has been thus construed in Delaware; it has thus been construed in Pennsylvania, in New York, and in various other States. Now, with this known construction, with this known application, it was incorporated into the bill of rights in the State of Kansas; and what truer, more unanswerable rule is there than this: that when a law has been received with a certain known approved construction uniformly, if another community adopt the same law, they are held to adopt the same construction? Hence, I say, they adopted it with that known application.

But I have two other reasons to present to the Senator. He says it is a revolutionary right. I do not care what you call it:

"That which we call a rose
By any other name would smell as sweet."

Call it revolution, if you please. It is a civil means in conformity with the declaration of the Constiution by which the people may reform, alter, amend, or abolish their constitution. I care nothing about the name. He says it is a revolution by the sword. I say it is not that, but a legal change through the agency of the ballot-box. First, this provision is found in all our State constitutions. They are all republican, because they could not be in the Union without being republican. Second, the Constitution says that the Federal Government shall protect each State from domestic violence. It is bound to do it. Suppose the Senator from Illinois should undertake to put his construction into effect, and say it is a right to draw the sword to revolutionize the Government; it would be domestic violence, and the Federal Government would have to crush it on the instant. Therefore it proves that it cannot be understood as implying a resort to the sword to revolutionize a State government. That construction, therefore, is excluded.

Finally, when a constitution makes two provisions on the same subject, it is the duty of both the judge and the statesman to give a construction to both clauses that will give force and effect to each if it be possible; and if not, if they be so repugnant that they cannot stand together, one or the other must give way. Now, a reasonable construction can be given to both of these clauses which will enable both to stand and have vitality, force, and effect. I explained this before, but I passed over it so hastily that perhaps I shall be excused for repeating the same idea again. The constitution says, after the year 1864, the Legislature, by a two-thirds vote, may proceed to amend the constitution. The constitution also says that the people at all times have the right to amend their constitution. How shall you construe the two clauses so as to allow the people at all times to have the power to amend it? I answer, if the government takes the initiative, if the government of its own volition—I mean the governing power, the Legislature—undertakes to amend the constitution, they can only do it in the way pointed out in the constitution, because their power is derived from the constitution; and if a certain method be specified and pointed out for their action, it prohibits the government, the governing officers, the Governor, and Legislature, or otherwise, just according as the amending power may be vested for the time being, from pursuing any other method. Now, the governing power is limited to the mode pointed out. The people are not limited, and cannot be limited. How can you get them together? I answer, just as they always do get together. They instruct their Legislature to provide a rule of uniform action to enable them legally to come together. It may be called revolution if you choose, but when the people come together *en masse*, or by representatives under the sanction of law, they are in the exercise of their original rights untrammelled by constitutions, unrestrained by any provisions in their old constitution. They can do just as they please, consistent with private rights. This is the construction that is to be placed upon the two provisions.

If you say otherwise, that will bring you in conflict with the honorable Senator from Michigan. It amounts to just this: if they may be tied up and prohibited from amending their constitution until the year 1864, they

can be until 1865, 1866, 1870, and seventy times seventy. The principle is the same; and yet the Senator from Michigan says the people will never submit to the doctrine that they shall not govern themselves. If they will not, they must retain the power of amending their constitutions in a legal, orderly method. Otherwise, a preceding generation governs them. Otherwise, the people may be restrained from changing their constitution for as long as they live, which is a doctrine repugnant to the genius of our institutions. There is no question about this fact that this is the received and known construction, that it has been followed out time and time again.

I believe, with others, that constitutions ought not to be changed too frequently; that they ought not to be twisted and turned to suit the emergency of any particular occasion; that they ought to have stability and uniformity, and be continued long enough to commaud veneration. If our Federal Constitution had been changed every year, there would be but little veneration for it. If our State constitutions were changed every few years, there would be but little respect for them. I desire, therefore, to see stability, uniformity, and every constitution kept in existence long enough to command the entire respect of the people. If they see the blunders and errors, they can suggest a remedy without endangering its other better parts. They can resort to legal means, call a couvention, and mould and make a new constitution. What I mean by legal means is, to devise a rule which shall make the action uniform, equal, and just; just as the convention law in Kansas was; just as the convention laws in all the States of this Union are and have been. It is simply to prescribe a rule by the existing government, at the instance of the people by which they may come together, in person or by representatives, and exercise an original power in the reformatiou of their government.

I shall now leave the subject. I have shown that this is a legal constitution, fairly adopted; that the allegations of fraud made against it are unsupported; and that there is no well-sustained allegation of fraud against any single proceeding affecting the validity of this constitution. I have also endeavored to show that it is a very important question, vital to the interests of the whole Union, vital to the Democratic party, vital to the South. I would not appeal to "Americans" to build up the Democratic party, but I would appeal to them not to assist in building up the only party dangerous to the integrity of the institutions of our country. I would appeal to them, if they cannot be of us, at least help us to break down the common enemy of us both.